

SURROGATE PARENT FOR SPECIAL EDUCATION SERVICES

FREQUENTLY ASKED QUESTIONS

The Individuals with Disabilities Education Act (IDEA) was enacted to protect the rights of children with disabilities and ensure that they have available to them a free appropriate public education. When the parents of a child with a disability are not known, cannot be located after reasonable efforts, or when the child is a ward of the state, a surrogate parent must be appointed. A “surrogate parent” is an individual appointed to act in place of the parent when making special education decisions for a child. The surrogate parent cannot be an employee of the State Education Agency, the local education agency, or any other agency involved in the care or education of the child. Moreover, the surrogate parent must not have a personal or professional interest that would conflict with the child’s interest.

The following questions and answers provide guidance on some frequently raised issues.

1. If the child is a ward of the state but the parent is known and located and is not subject to an order suspending or terminating education rights, is there a need for a surrogate parent?

No. If the parent is known and able to be located, there is no need for a surrogate parent. [34 C.F.R. §300.519(a)]

2. Must a surrogate parent be appointed if there is another person that meets the definition of “parent” in IDEA 2004

If there is an individual who meets any of the definitions of “parent” as found in IDEA ‘04, no surrogate needs to be appointed. The federal regulations define “parent” as:

- A biological or adoptive parent of a child;
- A foster parent;
- A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- An individual acting in place of a biological parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or
- A surrogate parent

[34 C.F.R. §300.30(a)]

3. Must a surrogate parent be appointed if a child has a foster parent?

Federal law, as noted above, considers a foster parent the “parent” for IDEA purposes. As such, no surrogate is required.

4. Can the child’s Department of Economic Security/Child Protective Services Specialist, other state agency employee or contractor of a state agency (group home staff, etc.) be appointed to serve as the child’s surrogate parent?

No. Federal law specifically prohibits employees or the State Education Agency, the child’s school, or employees of any agency involved in the child’s education or care from serving as the child’s surrogate parent. [34 C.F.R. §300.519(d).] There is no law preventing school personnel or the surrogate parent from inviting the CPS Specialist from attending the child’s Individualized Education Program (IEP) meeting, but that individual cannot give consent for evaluation or initial placement of a child, nor can he or she act as the parent at an IEP meeting.

5. Can a group home or residential treatment center staff member/employee be appointed the surrogate parent?

No. Group home and residential treatment center staff members do not meet the definition of a “parent” under IDEA 2004. If the parent is not known or located or is barred by a court order from serving as the parent in the special education process, a surrogate parent must be appointed immediately.

6. Can a shelter worker be appointed as surrogate parent for an unaccompanied youth?

Yes, but only temporarily. The school or other public education agency must immediately begin the process of appointment of a regular surrogate parent if the parent is not known or located or is barred by a court order from serving as the parent in the special education process.

7. If a child is in the legal custody of the State, has been placed with a foster parent, parental rights have not been terminated, and the parents’ educational rights have not been suspended, can the foster parent participate in the IEP meeting, etc.?

Yes. Regardless of whether the biological or adoptive parent attends, the foster parent may participate in the IEP meeting as a participant. If the biological or adoptive parent refuses to attend/participate, the foster parent may act as the parent in making special education decisions.

8. The child is in foster care and the parents’ education rights have not been suspended. Both the parent and the foster parent attend the IEP meeting and a disagreement arises concerning the IEP placement between the foster and natural parent. Which one has the authority and right to serve as the decision-making parent?

In this scenario, the parent, not the foster parent, has the legal authority and rights.

9. The parents(s) leave(s) the child to live with another adult and the parent is no longer available. Who is able to make special education decisions on behalf of the child?

Because federal law defines parent as, among other things, “an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives...”, if the school is unable to locate the parent, for special education purposes, the “parent” would be the adult with whom the child lives. For this purpose only, there is no requirement of legal guardianship. However, whenever possible, the school should clarify the intent of the parent when a child is living outside the home.

10. If the foster parent is employed by the same district in which the child attends school (or by a charter school the child attends), can the foster parent make the special educational decisions?

Yes. Employees of a State or local education agency are only barred from serving as surrogate parents, not as foster parents acting as the parent. *See* 20 U.S.C. Section 1415(b)(2)(A).

11. A child lives with the foster parent. The child, however, still has a court appointed legal guardian (but not the State). Can the foster parent be a parent for special educational purposes?

No. The foster parent would not need to serve as the parent for special educational purposes because in this situation the legal guardian has the right and authority to make special education decisions on behalf of the child.

12. What about the case of tribal youths?

The Indian Child Welfare Act provides that tribes have exclusive jurisdiction over any proceedings involving a Native American child who is a ward of the tribal court, regardless where the child resides or is domiciled. Consequently, a tribal court is a court of competent jurisdiction with respect to matters involving Native American children and shall be responsible for the appointment of surrogate parents where necessary. In short, if the child is a ward of the court/State, IDEA applies and, therefore, CPS case manager would *not* be allowed to act in the role of “parent.” However, if the child is a ward of the tribal court, that court is responsible for appointment of surrogate parents, which may be the case manager if the court so chooses.

13. Can a child’s biological or adoptive parent who is incarcerated make special education decisions on behalf of the child?

Yes, provided that there is not a judicial decree preventing the parent from making educational decisions.